

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

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CURVES INTERNATIONAL, INC.,
a Texas corporation,

Plaintiff,

v.

STEPHANIE O'CALLAGHAN,
a Resident of New York,

Defendant.
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: **Electronically Filed**
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: C.A. No.07-CV-6404 (CLB)
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CERTIFICATION OF RONALD D. DEGEN PURSUANT TO LOCAL RULE 6.1(d)

1. I am a member of the Bar of this Court and a member of the firm of O'Rourke & Degen, PLLC, local counsel for Plaintiff Curves International, Inc. ("Curves").

2. I have been representing franchisors in New York State for more than 25 years, am fully familiar with the facts and circumstances of this case, and am familiar with the laws concerning trademarks and franchises.

3. This Certification is being submitted in support of Plaintiff's motion for a preliminary injunction.

4. The statements made in Plaintiff's Memorandum of Law and signed by me are hereby incorporated herein by reference and made part of this Certification.

REASON FOR REQUEST FOR PROCEEDING BY ORDER TO SHOW CAUSE

5. Immediate relief is needed, because Defendant has refused to cease using the CURVES® Marks, equipment and other indicia of a CURVES® franchise, and is violating the post-termination covenant against competition accepted by Defendant when she signed the Franchise Agreement. Defendant continues to operate a fitness center business using the Curves'

signs, promotion, advertisements, equipment, and other materials to unlawfully compete with Curves at the very location of Defendants' formerly licensed CURVES® franchise. The continued use of Plaintiff's marks infringes upon its rights under the *Lanham Act*. As demonstrated in Plaintiff's Memorandum of Law, by using the trademarks and trade name of CURVES®, Defendant has caused and continues to cause it irreparable harm.

6. Every day consumers are using Defendant's facilities under the mistaken belief that they are at a franchised CURVES® location. Defendant's continued operation of a competitive fitness center in violation of the restrictive covenant she accepted has caused and continues to cause irreparable harm to Curves' customer goodwill and franchise system. The damage that is being done to Curves' reputation among New York State consumers may be incapable of being repaired.

7. Unless this Court allows Plaintiff to proceed by order to show cause, valuable time will have been lost and Defendant will be able to continue to misappropriate the CURVES® Marks.

CERTIFICATIONS SUBMITTED IN SUPPORT OF MOTION

8. In support of this application Plaintiff is submitting the Certifications of Kevin D. Ayers and Patricia Hoffman. (Exhibits 1 & 2).

NO PREVIOUS APPLICATION

9. No previous request has been made for the relief requested herein.

I certify under penalty of perjury that the foregoing is true and correct. Executed on this 17th day of July, 2007.

/s/ Ronald D. Degen
RONALD D. DEGEN (RD 7808)